

## **SUBCHAPTER D : NOTICE AND HEARING**

### **§301.51. Notice Required.**

The notice procedures set forth in this subchapter are required for applications for approval of levees and other improvements for which commission approval is required pursuant to the Texas Water Code, §16.236. For the approval of a district's proposed plan of reclamation not involving levees and other improvements for which approval is required pursuant to the Texas Water Code, §16.236, notice in compliance with the Open Meetings Act shall be sufficient, and the notice procedures set forth in this subchapter shall not be required.

### **§301.52. Contents of Notice of Application and Commission Action.**

The notice of application shall fairly set forth the substance of the application and proposed action. The notice shall include the following:

- (1) the exact location of the proposed levees and other improvements as nearly as the same can be described;
- (2) the date on which the application was filed with the executive director;
- (3) a statement that the executive director has determined that the application is administratively complete;
- (4) the applicant's anticipated construction and completion schedule;
- (5) the applicant's name and mailing address;
- (6) a description of the project which reasonably describes the specific nature and scope of the project, including type of approval applicant is seeking from the commission;
- (7) an explanation of the method for submitting a response to the application and/or a written request for a public hearing; and
- (8) any additional information the commission deems necessary.

### **§301.53. Notice of the Application By Mail.**

(a) The chief clerk of the commission shall send notice by first class mail to persons listed in subsection (b) of this section and to persons who in the judgment of the commission may be affected. The chief clerk shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) The notice shall be mailed to the following:

(1) current landowners named in the application and/or map which accompanies the application as described in §301.33 of this title (relating to Preliminary Plans: Data To Be Submitted);

(2) the county judge(s) and health authorities of the county or counties affected;

(3) the following entities:

(A) the Texas Department of Health;

(B) the Texas Parks and Wildlife Department;

(C) the Texas Railroad Commission;

(D) the Texas State Soil and Water Conservation Board;

(E) the Texas General Land Office;

(F) the Texas Historical Commission;

(G) local river authorities;

(H) the Federal Emergency Management Agency; and

(I) the U. S. Corps of Engineers;

(4) the applicant;

(5) persons who request to be put on the mailing list and participants in past commission proceedings for levee(s) or other improvements; and

(6) any other person the commission may include, or the executive director may identify after review of the data submitted as required by §301.33 of this title (relating to Preliminary Plans: Data To Be Submitted).

(c) Failure to mail notice to the entities listed in subsection (b)(3) of this section shall not render notice invalid pursuant to this section.

**§301.54. Notice of the Application by Publication.**

(a) Upon being notified by the chief clerk of the commission to publish a notice of application and commission action, the applicant shall cause the notice to be published in a newspaper of general circulation in each county wherein the project would have potential impact as set forth in §301.33 of

this title (relating to Preliminary Plans: Data To Be Submitted) and §301.53 of this title (relating to Notice of the Application By Mail). Publication in one newspaper is sufficient if the newspaper is of general circulation in each county or counties throughout the area of potential impact.

(b) The date of publication of notice of the application and commission action shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application. The applicant shall pay the costs of publication.

**§301.55. Action On the Application.**

(a) Action without public hearing. The commission may take action on an application at a regular meeting without holding a public hearing provided:

(1) at least 30 days prior to the regular meeting at which action is taken, notice of the application and commission action has been given by mail and by publication; and,

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been submitted by a commissioner, the executive director, or an affected person who objects to the application.

(b) Request for public hearing.

(1) A request for public hearing under this chapter made by an affected person who objects to the application must be in writing and must be submitted to the commission within 30 days after the publication of the notice of application. The commission may extend the time allowed for submitting a request for public hearing.

(2) The written request shall contain the following information:

(A) the name, mailing address, and phone number of the person making the request;

(B) the application number or other recognizable reference to the application;

(C) a brief description of the interest of the requester, or of persons represented by the requester; and,

(D) a brief description of how the application, if granted, would adversely affect such interest.

(3) If the commission determines that the request for public hearing is in substantial compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

**§301.56. Publication of Notice of Public Hearing.**

(a) If a public hearing shall be held pursuant to §301.55 of this title (relating to Action On the Application), the applicant shall cause the notice to be published in a newspaper of general circulation in each county wherein the project would have potential impact. Publication in one newspaper is sufficient if the newspaper is of general circulation in each county or counties throughout the area of potential impact.

(b) A notice of hearing shall identify the application, the date, time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining additional information, and such other information the commission deems necessary.

(c) The date of publication of notice of public hearing shall be on or before the date of publication directed by the commission. In any event, the date of publication of notice of public hearing shall be not less than 30 days before the date set for the public hearing. The applicant shall pay the costs of publication.

**§301.57. Notice of Remanded Hearing.**

A hearing on an application which has been remanded by the commission to the office of hearings examiners may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest advocate, other parties, and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk of the commission shall mail such notice to these persons not less than 10 days before the date of the hearing.

Date Effective: July 31, 1986